The Attorney-General puts this in such shape that it seems nearly self-evident: "It is settled law that interstate commerce cannot be regulated by state *constitutions*, nor by state *legislatures* . . . . nor by *corporations* created by state legislatures, acting through their *directors*. . . . Whence comes such power, then, to stockholders, if all the sources of all *their* rights and powers are impotent to defeat the law of congress?"

CONTROVERSIES BETWEEN STATES.—The clause in the Constitution conferring jurisdiction on the courts of the United States over "controversies between two or more states," was calculated, probably, more than any other, to substitute law in place of violence, and to bring to harmony a number of jealous and partly sovereign states. Even in "the imperfect system," as Hamilton termed the Articles of Confederation, some provision was made for a court, or rather a special board as the occasion might arise to adjust differences "concerning boundary jurisdiction or any cause whatsoever." Art. IX. It was essential to the peace of the Union, not only by reason of the interfering land claims, but also on account of the many other sources of animosity which had sprung up between the states, and because it was "warrantable to apprehend that the spirit which produced them will assume new shapes that could not be foreseen nor specifically provided against." THE FEDERALIST, No. 80. The necessity for the provision was so well perceived that in the first draft of the Constitution by the committee submitted to the constitutional convention on August 6, 1787, was contained—Art. XI., Sec. 3—the enactment that "all controversies between two or more states, except such as shall regard territory or jurisdiction," were to be settled by the courts of the United States. ELLIOT'S DEB. I., pp. 224, 229. Disputes concerning territory or jurisdiction were to be arranged by a court appointed by the senate. This limitation was struck out by the committee on revision, and in the report on September 12, 1787, the clause as it now stands was submitted. Art. III., Sec. 2, ELLIOT'S DEB., pp. 298, 303. This judicial authority, never before vested in any tribunal, is lodged by the terms of the Constitution in the Supreme Court, which has the power not only to hear and determine causes brought before it, but to command appearance by process and to enforce its judgments. MILLER ON THE CONSTITUTION, p. 328.

The scope of the "controversies," which was meant to be comprehensive (THE FEDERALIST, No 80), has been variously limited. It extends only to civil questions, *Chisholm* v. *Georgia*, 2 Dall. p. 431; involving generally rights of persons or property, *Georgia* v. *Stanton*, 6 Wall. p. 76; of a substantial nature, *New York* v. *Connecticut*, 4 Dall. p. 4. The jurisdiction of the Supreme Court will not extend to aid a state in the recovery of its "sovereignty and jurisdiction," *Rhode Island* v. *Massachusetts*, 12 Pet. p. 753; nor to suits by other political communities, *Texas* v. *White*, 7 Wall. p. 719; nor to contentions of a purely political nature, *Cherokee Nation* v. *Georgia*, 5 Pet. p. 28; nor "to a prosecution by one state of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all." *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. p. 289. A state cannot invoke this jurisdiction by merely assuming

the prosecution of debts of its citizens owing by other states, *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana*, 108 U. S. 76, or by acting as a simple representative for the redress of other grievances of certain individuals, or by not being immediately involved. *Louisiana* v. *Texas*, 176 U. S. 1

There are certain classes of differences between states which have been held justiciable in the Supreme Court. The most prolific source of dispute has been the question of boundaries. These had already arisen in colonial times, *Penn* v. *Lord Baltimore*, 1 Ves. Sen. 444, and there were a number of standing claims of this character at the time of the adoption of the Constitution. It was chiefly in view of these contentions that the clause was incorporated into that instrument. *Rhode Island* v. *Massachusetts*, 12 Pet. p. 724. The first case that arose was *New York* v. *Connecticut*, 1799, 4 Dall. 1. It was assumed without argument that the jurisdiction attached. This has been followed by a line of cases in which it was finally settled, after some debate, that this was a proper controversy. *New Jersey* v. *New York*, 3 Pet. 461, 5 Pet. 284, 6 Pet. 323; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 13 Pet. 23, 14 Pet. 210, 15 Pet. 233, 4 How. 591; *Missouri* v. *Iowa*, 7 How. 660, 10 How. 1; *Florida* v. *Georgia*, 17 How. 478; *Alabama* v. *Georgia*, 23 How. 505; *Virginia* v. *West Virginia*, 11 Wall. 39; *Indiana* v. *Kentucky*, 136 U. S. 479, 167 U. S. 270.

Another and less numerous class of cases has arisen from compacts directly between states. While these agreements have been generally as regards boundary lines, there is no reason to suppose that they could not embrace many other stipulations. Contests concerning them would be cognizable in the Supreme Court. *Virginia* v. *West Virginia*, 11 Wall. 39; *South Carolina* v. *Georgia*, 93 U. S. 4; *Virginia* v. *Tennessee*, 148 U. S. 503.

A third class of justiciable controversies is that in which a state protects as against another state the health, comfort, and commerce of its citizens. "It is true that no question of boundary is involved, nor of direct property rights * * * * But it must surely be conceded that if the health and comfort of the inhabitants of a state are threatened, the state is the proper party to represent and defend them." *Missouri* v. *Illinois*, 180 U. S. 208, 241. See also, *Louisiana* v. *Texas*, 176 U. S. 1; *South Carolina* v. *Georgia*, 93 U. S. 4, 14.

The prophecy of Hamilton that the controversies would assume new shapes has been realized in a recent case, decided by the Supreme Court February 1, 1904, which has added a new class to those already enumerated—the case of *South Dakota* v. *North Carolina*, 24 Sup. Ct. Rep. 269. One Schafer was holder of certain bonds issued by the State of North Carolina, secured by a mortgage of railroad stock belonging to that state. After holding the bonds for a long time, he presented a petition to the legislature of North Carolina, praying that an appropriation might be made to pay him, or that an Act might be passed allowing suit in the courts to enforce the mortgage lien on the railroad stock. The legislature refused these requests. Thereupon Schafer assigned and donated outright to the state of South Dakota a part of these bonds, an Act having previously been passed in that state authorizing the acceptance of such donations and providing for suits to be

brought to enforce them. Action was accordingly commenced in the Supreme Court. It was held by a majority of the court that it was a proper controversy, that as long as the transaction was bona fide, the motive of the donation could not be inquired into. Said Mr. Justice BREWER:—

"Has this court jurisdiction of such a controversy, and to what extent may it grant relief? Obviously that jurisdiction is not affected by the fact that the donor of these bonds could not invoke it. * * * * The question of jurisdiction is determined by the status of the present parties, and not by that of prior holders of the thing in controversy. Obviously, too, the subject matter is one of judicial cognizance. If anything can be considered as justiciable, it is a claim for money due on a written promise to pay; and if it be justiciable, does it matter how the plaintiff acquires title, providing it be honestly acquired? It would seem strangely inconsistent to take jurisdiction of an action by South Dakota against North Carolina on a promise to pay made by the latter directly to the former; and refuse jurisdiction of an action on a like promise made by the latter to an individual, and by him sold or donated to the former."

Relief was granted, and it was ordered that the state of North Carolina pay the bonds, or in default thereof that the railroad stock be sold.

To this holding four justices dissented on the grounds that the controversies meant were those arising *directly* between the states, that the spirit of the 11th Amendment to the Constitution prevented one state from acquiring a claim asserted against another state by a citizen of that or another state, or an alien, and thereby creating a controversy in the constitutional sense, that the motive of the transaction could be inquired into, and that, as the debt had not been recognized by the state of North Carolina, it was not justiciable, and the state of South Dakota had no greater rights than its assignor.

It was the opinion of James Wilson that when a citizen of one state had a controversy with another state, there should be a tribunal where the parties might "stand on an equal and just footing." ELLIOT'S DEB. II., p. 456. For when a state borrows money it is like a trader, and the same obligation to pay rests upon it. This was a strict legal liability until the 11th Amendment became law, when a great immunity was given to the states, a privilege that has often been abused. The effect of the decision is to furnish a tribunal of retribution and to provide at least one satisfaction to the creditor whose debt a state has repudiated. He may become a benefactor, and at the same time may see that a debtor on whose integrity he has relied, will not enjoy the fruits of a violation of contract. Nor need serious consequences to the dignity of the state be apprehended. If it is not quite consonant with the majesty of a sovereignty to assume donations, with the purpose of suing upon them, such a proceeding cannot taken away any respect due the defendant state whose cupidity and breach of faith have called it forth.

LIABILITY OF MEMBERS OF CONGRESS FOR BRIBERY; THEIR CONTRACTS WITH THE GOVERNMENT.—When does a man who has been elected or appointed a United States senator become a member of Congress? This question was raised in the recent case of *United States* v. *Dietrich* — (1904), — 126 Fed. Rep 676, decided in the U. S. Circuit Court for the District of Nebraska.